

EXHIBIT D

**BEFORE THE
VIRGINIA STATE CORPORATION COMMISSION**

Petition of)	
)	
Cavalier Telephone, LLC.)	Case No. PUC2002 _____
)	
For Arbitration with Verizon Virginia, Inc.)	
pursuant to 47 U.S.C. § 252(b) of the)	
Communications Act of 1934, as amended by the)	
Telecommunications Act of 1996)	

**PETITION OF CAVALIER TELEPHONE, LLC
FOR ARBITRATION**

Cavalier Telephone, LLC ("Cavalier"), through its undersigned counsel, hereby petitions the Virginia State Corporation Commission ("Commission") to arbitrate unresolved issues in the negotiation of an interconnection agreement with Verizon Virginia, Inc, ("Verizon"), pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), and the Commission's Procedural Rules for Implementing Sections 251 and 252 of the Act, 20 VAC §§ 5-419-10 *et. seq.* In support of this Petition, Cavalier states as follows:

PARTIES

1. Petitioner Cavalier a certificated local exchange carrier providing service in ~~competition with Verizon in various locations throughout Virginia. Cavalier is a "local~~ exchange carrier" and a "telecommunications carrier" within the meaning of the Act,¹ and a local

¹ 47 U.S.C. §§153(26); 153(44).

exchange telecommunications provider under Virginia law,² as authorized by the Commission pursuant to Va. Code Ann. §56-265.4-4.³ Cavalier's official business address is:

2134 West Laburnum Ave.
Richmond, Virginia 23227

2. The names, addresses, and contact numbers of Cavalier's representatives for purposes of this proceeding are as follows:

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² See 20 Va. Admin. Code § 5-400-180 (2001).

³ See Application of Cavalier For A Certificate of Public Convenience and Necessity, Case Numbers TT-61A and T-431, as issued to Cavalier by the Virginia State Corporation Commission by Final Order dated January 14, 1999.

3. Respondent Verizon is an incumbent provider of local exchange services within portions of Virginia. Verizon's offices are located at 1320 North Court House Road, Arlington, Virginia, 22201. Verizon is, and at all relevant times has been, an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.⁴ Verizon Virginia, Inc. is, and at all relevant times has been, a "Bell Operating Company" under the terms of the Act.

4. The name, address and contact number for Verizon's representatives during the negotiations with Cavalier is as follows:

Hernando A. Londono
Gary Librizzi
Jim Pachulski
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Verizon's Local Counsel is:

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Vice President and General Counsel
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JURISDICTION

5. The Commission has jurisdiction over Cavalier's Petition pursuant to Section 252 of the Act and the Commission's Procedural Rules for Implementing Sections 251 and 252 of the Act, 20 VAC §§ 5-419-10 *et. seq.*⁵ Under the Act, parties to a negotiation for interconnection, access to unbundled network elements, or resale of service within a particular state, have a right

⁴ See 47 U.S.C. § 251(h).

⁵ See also, Va.Code Ann. § 56.1 *et seq.* (2001).

to petition the state commission for arbitration of any open issues whenever negotiations between them fail to yield an agreement.⁶ Under Section 252(b)(1) of the Act, the request for arbitration of the state commission may be made at any time during the period from the 135th day to the 160th day (inclusive) after the date on which the incumbent LEC receives a request for negotiations under Section 251 of the Act. A copy of an email memorializing the date (March 11, 2002) upon which the parties agreed negotiations for an interconnection agreement with Verizon began is attached in Exhibit "A". This Petition is timely filed within 160 days of that date.

STANDARD OF REVIEW

6. This arbitration must be resolved under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission ("FCC"), including 47 C.F.R. 51.5 *et seq.* Further, pursuant to 20 VAC 5-400-180(F)(6) of the Commission's Procedural Rules for Implementing Sections 251 and 252 of the Act, 20 VAC 5-419-10 *et. seq.*, the Commission may arbitrate contested interconnection issues. Accordingly, Cavalier requests that the Commission make an affirmative finding that the rates, terms and conditions that Cavalier requests in this arbitration proceeding are consistent with the requirements of applicable federal and state law. Cavalier requests that the Commission conduct an evidentiary hearing, and appoint an arbitrator, arbitration panel, or administrative law judge to preside over this proceeding.

7. Cavalier is aware that the Commission previously has declined to exercise jurisdiction over interconnection arbitrations involving federal law and instead has referred the

⁶ 47 U.S.C. § 252(b).

matters to the FCC for resolution.⁷ Cavalier wishes to have its disputed interconnection issues decided under applicable federal law and does not oppose consideration of its Petition by the FCC. To the extent the Commission retains jurisdiction over any portion of the Petition, however, Cavalier requests a hearing pursuant to 20 VAC 5-419-30(1).⁸

NEGOTIATIONS

8. Cavalier has been negotiating with Verizon over interconnection matters for several months (beginning in 2001 in Virginia and New Jersey). For purposes relevant to this Petition, with respect to Virginia, Cavalier sent a letter to Verizon on March 6, 2002 (attached in Exhibit "A") requesting to begin the negotiation process for all of Cavalier's operating states (Delaware, Virginia, Maryland, Pennsylvania, Washington, D.C. and New Jersey). In that letter Cavalier requested to "roll in" the on-going negotiations from Virginia and New Jersey that had occurred since 2001. In short, Cavalier wished to start fresh with negotiations for all its regions, seeking one interconnection agreement that could be adapted for use in all of Cavalier's operating jurisdictions, and that request was made in writing by Mr. Clift's letter to Mr. Masoner, dated March 6, 2002.

9. Verizon responded in an email, dated March 11, 2002 (Michelle Miller to Mr. Clift), also attached in Exhibit "A," acknowledging Cavalier's request to begin negotiations towards one agreement for application in Pennsylvania, Maryland, Delaware and Washington,

⁷ See *Petition of Global NAPs South, Inc., for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Virginia, Inc.*, Case No. PUC020001, Preliminary Order (Va. SCC Feb. 20, 2002) at 2-3. See also, *id.*, *Order of Dismissal* (Va. SCC March 20, 2002); See also *In the Matter of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc for preemption of the jurisdiction of the Virginia State Corporation Commission regarding interconnection disputes with Verizon Virginia Inc., and for expedited arbitration pursuant to Section 252(e)(5) of the Communications Act*, CC Docket No. 00-218, 00-249, 00251, DA No. 02-1731 (Memorandum and Order Released July 17, 2002) ("Consolidated Virginia Arbitration Order").

⁸ Whichever forum the Commission selects, Cavalier requests that the Commission make this determination on an expedited basis, whereupon Cavalier will promptly seek adjudication of this matter before the FCC.

D.C. Follow-up emails from Mr. Clift requested that Virginia and New Jersey be included in the list, and, on March 14, 2002, Verizon confirmed that a new time frame would apply to all states (Delaware, Virginia, Maryland, Pennsylvania, Washington, D.C. and New Jersey).⁹ Also, Verizon confirmed that the starting date for all states and jurisdictions would be March 11, 2002. Ms. Miller of Verizon also provided a generic draft Verizon template agreement with state specific attachments for all jurisdictions. Thus, the parties contemplated that the outcome of the negotiations generally would bind the parties respective operations in these regions, save for state specific requirements.¹⁰ A copy of the various emails and correspondence, without exhibits, is attached as Exhibit "B."

10. However, for reasons that have never been explained to Cavalier, and despite Ms. Miller's sending Cavalier a Verizon template document for use in all states, Verizon, without checking or agreeing with Cavalier, sent Cavalier on May 17, 2002 a marked up version of the current New Jersey/Conectiv Communications, Inc. ("Conectiv") agreement (in force between the parties in New Jersey as a result of the acquisition of Conectiv by Cavalier). Cavalier told Verizon that it could not make out the changes from the existing agreement, and requested a short list of Verizon changes and/or issues that Cavalier could review. However, Verizon has not yet provided Cavalier with such a separate list of its issues to be incorporated into the agreement.

11. Accordingly, on May 29, 2002, Cavalier sent Verizon a clear list of its on-going issues that Cavalier believed needed to be addressed, regardless of which baseline agreement the

⁹ Attached in Exhibit "B" are all the emails and correspondence chronologically that evidence the negotiations and discussions that have taken place thus far.

¹⁰ Because most of Cavalier's current Interconnection Agreements with Verizon have expired, or are set to expire soon, it has been the goal of the parties to negotiate the terms of an agreement that can be implemented in all the jurisdictions that Cavalier operates in; namely, the jurisdictions of Virginia, Maryland, the District of Columbia, Delaware, Pennsylvania, and New Jersey.

parties used. Cavalier's list was based on several years of experience of unresolved interconnection problems existing between the parties. Verizon, however, insisted on working off its marked up New Jersey agreement, while Cavalier indicated that it preferred to use the existing agreement operative in Virginia (an MCI/Metro agreement). And, in preparation for further conference calls to discuss the matters, Cavalier provided Verizon with a marked up amendment to the existing MCI/Metro interconnection agreement in Virginia, on July 12, 2002.¹¹

12. The parties then began a series of weekly conference calls, and during the calls Cavalier made clear, again, that it wished to use the existing Virginia agreement as the template. It was (and remains) Cavalier's hope that these negotiations would resolve a distinct and narrow set of issues first, which could then be incorporated into the selected underlying interconnection template operative in that state. The reason that Cavalier suggested using the MCI/Metro agreement was due to the fact that it has been in use for much of the company's existence in Virginia.¹²

13. During the telephone conferences with Verizon over the last several weeks Verizon requested that Cavalier supply proposed language related to the issues raised by Cavalier, and Cavalier has complied, sending Verizon suggested language that could be incorporated into the MCI/Metro agreement. This suggested language was again sent to

¹¹ The Commission has the existing MCI/Metro agreement on file that was approved for use by Cavalier and Verizon. If the Commission would like a further copy, Cavalier can provide the Commission with one.

¹² In an email dated July 30, 2002, in the hopes of further expediting the resolution over the impasse of which agreement to use as the template, Cavalier offered to use the soon-to-be filed conforming agreement in the FCC's Consolidated Virginia Arbitration between Verizon and AT&T, MCI, and Cox Communications, given that this agreement represents the most up-to-date position of the FCC on the proper application of the Act and the FCC's implementing rules to many of the industry-wide disputes over interconnection terms. Cavalier proposed to use this conforming agreement as the template for all of the operative jurisdictions, to simplify the matter, thus only leaving the unresolved issues on the list provided to Verizon to be worked in. Verizon has not provided Cavalier with an adequate response to this request, as of the date of this filing.

Verizon on July 30, 2002 (attached as Exhibit "C"), with annotations, explanation and notes reflecting the parties' negotiations to date. Verizon has not, as of the date of this filing, responded to Cavalier's proposed language. Finally, while the parties have not resolved their differences, Cavalier has, and will continue to, negotiate in good faith with Verizon in an effort to resolve these disputed issues while this arbitration is pending, and will notify the Commission if and when arbitration of certain issues is no longer necessary.

STATEMENT OF UNRESOLVED ISSUES

14. As discussed below, several important matters separate the parties. Cavalier has several years of frustrating experiences with many of these issues first hand, and has raised these matters in several on-going proceedings. Cavalier is hopeful that these parties can reach resolution of these issues with the aid of the Commission in the context of this arbitration. These unresolved issues are now presented.

Issue No. 1: Interconnection Agreement

Description of Issue:

Which interconnection agreement shall form the template with which to work in changes and amendments particular to the network relationship between Cavalier and Verizon?

Cavalier Position:

Cavalier believes that there are very solid reasons for starting with the existing interconnection agreement that is operative in the state as the basic document from which to negotiate our next agreement. The existing agreement has been in force for several years; in very broad terms it "works," in that the parties are presently operating under it, and — while there are several areas that need to change, as noted below — it addresses the key issues of the ILEC-CLEC relationship; and it was approved by the relevant state regulators, and therefore meets the basic requirements of the law. Given that this was legally acceptable when it was adopted, changes to it should be justified by changed circumstances, not by some general desire on the part of either party to simply generically "update" the terms. As an alternative, Cavalier has proposed using the soon-to-be-filed conforming agreement in the Consolidated Virginia Arbitration at the FCC as the template for use in all of the other states.

Verizon Position:

Verizon wishes to use the New Jersey/Conectiv agreement as a new template as the starting point and believes the MCI/Metro agreement is out-dated. Moreover, Verizon is evaluating what appeals it will take in the Consolidated Virginia Arbitration, and will not agree to use the conforming agreement in that proceeding for a template for all of Cavalier's operative states and jurisdictions going forward.

Proposed Resolution of the Dispute:

As discussed above, Cavalier is willing to take the conforming agreement to be filed in the Consolidated Virginia Arbitration as the template to establish the basic provisions for the governing interconnection agreement, with the modifications outlined below. Failing that as an option, Cavalier believes that there are very solid reasons for starting with our existing interconnection agreement as the basic document from which to negotiate our next agreement. Cavalier requests that the Commission adopt the language contained at pp. 1-2 of Exhibit "C."

Issue No. 2: Term of Interconnection Agreement**Description of Issue:**

How long should the term of the new agreement be?

Cavalier Position:

As with the initial agreement between the parties, the term of the amended agreement should be three years. Negotiating terms for agreements is time consuming and resource-intensive. Once completed, the provisions should be given a commercially reasonable period of time to be operative, and three years has been the standard term in Cavalier's agreements with Verizon.

Verizon Position:

Verizon wishes to adopt a two-year term.

Proposed Resolution of Issue:

Cavalier requests that the Commission adopt the language setting forth a three year term in Section 2 of Cavalier's proposed language in Exhibit "C."

Issue No. 3: Directory Listings

Description of Issue:

Should there be a more efficient directory listings procedure put in place to handle the volume of customers generated by Cavalier service orders?

Cavalier Position:

There have been significant difficulties regarding the accuracy and timeliness of directory listings. Putting aside the parties' particular interests, Cavalier believes that the public interest is ill-served by inaccuracies in directory listings, and believes that the parties need to establish procedures reasonably calculated to produce truly accurate directories. The current directory input process places responsibilities on Cavalier to test and correct Verizon inputs. Further there are no remedies afforded to Cavalier for publishing errors in the white and yellow pages.

Verizon Position:

The current metrics address accuracy concerns in the published directory. Further modification of the directory processes and metrics are under consideration in the Virginia Collaborative and should not be considered in these negotiations.

Proposed Resolution of Issue:

This has been a major source of controversy to the parties in Virginia, as reflected in the Virginia Section 271 proceedings, and given the establishment of an on-going investigation of Verizon's directory processes in the collaborative review proceedings established by the Commission's staff. Rather than further delaying results, Cavalier proposes addressing these concerns now and recommends adopting the language contained at Section 3 of the proposed language in Exhibit "C."

Issue No. 3 (a): Verification of Cavalier Directory Listings

Description of Issue:

Should the responsibilities of the parties for the verification of directory listings be made clearer?

Cavalier Position:

Verizon already sends LVR's in connection with upcoming directories; the issues relate to accuracy and timing. Cavalier is willing either to have Verizon take actual, real responsibility for checking the accuracy of directory listings, or to take such

responsibility itself. But for the system to work, Verizon needs to state either that it has checked — in which case it is responsible for errors — or that it has not.

Verizon Position:

The directory metrics already address Verizon's accountability.

Proposed Resolution of Issue:

Cavalier proposes that the language in Section 3 of the proposed language of Exhibit "C" be used.

Issue No. 3(b): Verizon Verification

Description of Issue:

Should the party that verifies the accuracy of the listings be duly compensated by the other party for errors that are corrected by the reviewing LEC?

Cavalier Position:

If Verizon doesn't want to bother checking the LVR's, Cavalier will do so. Logically that function is Verizon's responsibility, since it generates the LVR's based on information provided by Cavalier, and at present Cavalier does not have any direct access to the systems that produce the LVR's. So, if Verizon wants Cavalier to do Verizon's job, that's fine; but it is only appropriate in that case that Verizon compensate Cavalier for that effort.

Verizon Position:

The directory metrics already address Verizon's accountability.

Proposed Resolution of Issue:

Cavalier proposes that the language in Section 3 of the proposed language of Exhibit "C" be used.

Issue No. 3(c): Cavalier Verification

Description of the Issue:

Should Cavalier be compensated when it checks for Verizon errors and corrects them only to have Verizon commit a further error?

Cavalier Position:

Cavalier will likely double-check Verizon's LVR's even if Verizon certifies that it has checked them, but given a certification, such double-checking would be at Cavalier's own expense. On the other hand, if Verizon, having certified that it has reviewed the LVR's for accuracy, nonetheless produces LVR's that contain errors, then there should be compensation to Cavalier and/or its customers for those errors. Over time, this system will create reasonable incentives for Verizon to be more accurate in developing the LVR's and in its listings, which is the goal that should control the Verizon directory process, not the goal of having Cavalier do more and more of Verizon's work.

Verizon Position:

The directory metrics already address Verizon's accountability.

Proposed Resolution of Issue:

Cavalier proposes that the language in Section 3 of the proposed language of Exhibit "C" be used.

Issue No. 3(d): Galley Proofs

Description of Issue:

Should Cavalier be allowed to check the accuracy of galley proofs prior to publication of the phone books?

Cavalier Position:

In a project as big as creating a directory, it is important to have many levels of checking, including a just-before-publication check of the accuracy of the galley proofs. Note that Cavalier is not here proposing to charge Verizon either for checking the galley proofs or for any errors found. By this stage, we just want to be sure there is a system that allows last-minute errors to be caught and corrected.

Verizon Position:

Current LVR and GUI interfaces provide sufficient tools for Cavalier to check customer listings.

Proposed Resolution:

There is no current test of the accuracy of the actual publication listings. Cox established in testimony in the Virginia 271 proceeding that Bell South makes a galley proof available to CLECs to spot check the accuracy of the proposed published listings. A

similar process would go a long way to ensure Cavalier that its customers listings will be placed in the phone books as requested. Cavalier requests that the Commission adopt the language contained in Section 3 of Exhibit "C."

Issue No. 3(e): Post Production Metrics/Remedies/Liquidated Damages

Description of Issue:

Should Verizon compensate Cavalier at a set amount in liquidated damages for errors in the directory caused by Verizon?

Cavalier Position:

A Cavalier customer who is not in the directory suffers real harm. There is essentially no legitimate justification that Cavalier can imagine for the situation addressed by this section, i.e., a customer listing included in the LVR but somehow omitted from the final directory. When that occurs, Cavalier incurs a significant loss of customer goodwill, as well as various out-of-pocket costs trying to maintain that goodwill. As a result, in these circumstances it is completely appropriate for Verizon to make payments to Cavalier to reflect the tangible and intangible costs that Cavalier incurs. Note that these payments would only apply where Verizon has made the error.

Verizon Position:

Verizon does not make any financial accommodations for its own customers, including credits for telephone service or yellow page ads, and does not feel it should pay CLECs a financial penalty for these errors.

Proposed Resolution of Issue:

Cavalier requests that the Commission adopt the language contained in Section 3 of Exhibit "C."

Issue No. 3(f): Database Access

Description of Issue:

~~Should Cavalier be allowed to directly input directory listings orders into Verizon's database?~~

Cavalier Position:

~~The party with actual, operational responsibility for performing a function is the party who should bear the risk of that function being performed improperly. If Verizon would rather not take operational responsibility for getting Cavalier's customer data (address, number, etc.) accurately into directories, and the parties can sort out a way to have~~

Cavalier perform that function, that would be fine with Cavalier. In that case, Verizon would not bear the risk of error since it would not be performing the relevant functions

Verizon Position:

The current directory input/verification process is functional and working properly.

Proposed Resolution of Issue:

Cavalier requests that the Commission adopt the language contained in Section 3 of Exhibit "C."

Issue No. 4: Compensation for Cavalier Trunking and Transport.

Description of Issues:

Should Cavalier be compensated for the transport of Verizon's traffic from the collocation location back to Cavalier's Switches?

Cavalier Position:

Pursuant to FCC rules, and the recent FCC MCI/AT&T/Cox interconnection arbitration decision, issued on July 17, 2002, Cavalier may choose a single point of interconnection (POI) in a LATA. Thus, Cavalier should receive compensation for one-way or two-way trunks provisioned by Cavalier that service Verizon's traffic back to Cavalier's switches. The rates charged by Cavalier will not exceed the rates charged by Verizon. Cavalier has further outlined its position in a complaint pending with the Commission.¹³

Verizon Position:

Not known

Proposed Resolution of the Issue:

The FCC has concluded that Verizon's preferred language regarding Geographically Relevant Interconnection Points ("GRIPS") and the artificial distinction between a physical point of interconnection and an "economic" interconnection point is contrary to the Act.¹⁴ ~~Cavalier is willing to abide by the FCC's ruling on this matter.~~ Cavalier requests that the Commission adopt the language contained in Sections 4 and 21 of Exhibit "C."

¹³ See Case No. PUC-2002-00089.

¹⁴ See Consolidated Virginia Arbitration Order at ¶¶ 36-72.

Issue No. 5: No Facilities for UNE T-1s

Description of Issue:

Can Verizon continue to reject UNE T-1 Orders for "no facilities" as outlined in their current policies?

Cavalier Position:

Circumstances where Verizon will not establish a T1 UNE are outlined in Verizon Tariff No. 203, Section 2. Otherwise, Verizon must accept and provision the Cavalier order, as it would its own customers. Moreover, the requirement for Cavalier to place three separate orders for the same T-1 circuit is wasteful and discriminatory. Cavalier has raised these issues with Verizon in many forums and has a pending complaint with the Commission over related matters.¹⁵

Verizon Position:

The provisioning of UNE T1's as outlined in the July 2001 industry letter conforms with the Act and requiring Cavalier to submit three orders for one product is necessary and the only method available for Cavalier to order high capacity wholesale services at UNE rates.

Proposed Resolution:

Verizon's UNE T-1 policy was declared to be illegal by the hearing officer assigned to review Verizon's Virginia Section 271 application.¹⁶ Verizon has failed to recognize this ruling or to modify its policies to be consistent with the hearing examiner's findings. Further, Verizon has objected to Cavalier's language to correct the deficiencies in this policy, concerning UNE DS1 loops. Instead Verizon requested that Cavalier enumerate what specific actions Verizon is requested to take in provisioning such circuits. Cavalier has requested that Verizon specify what actions Verizon will not take in provisioning such circuits. In an effort to advance negotiations on this point, Cavalier has proposed language, attached in Exhibit "C" that details the rationale for the language that is in line with the hearing examiner's ruling and in conformance with the Act. Cavalier requests that the Commission adopt the language contained in Section 5 of Exhibit "C."

¹⁵ See Case No. PUC 2002-00088.

¹⁶ See *In the Matter of Verizon Virginia, Inc.*, Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner, dated July 12, 2002 at pg. 115 ("I find that to fulfill our consulting role the Commission should advise the FCC that Verizon Virginia's policy has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with TELRIC-pricing principles").

Issue No. 6: Bethia Exchange

Description of Issue:

Should the pricing of UNEs be changed/lowered in Bethia, given the obvious changed demographics/costs?

Cavalier Position:

The cost data used to classify the Bethia exchange is almost ten years old. Demographics of the Bethia area in terms of residential and commercial growth have profoundly changed the cost. That area is like other Richmond areas, with lower group classifications. The wire center should be changed to a lower classification consistent with other wire centers with similar demographics. Cavalier raised these matters in a petition with the Commission and Verizon successfully moved to dismiss the matter where the Commission stated the matter would be a proper subject for arbitration.¹⁷

Verizon Position:

The Bethia wire center cannot be changed in isolation. All rate centers need to be updated.

Proposed Resolution:

Bethia may once have been rural enough to justify treatment as a non-Group 1 exchange, but by now — and certainly during the three-year projected term of the new agreement — it should be viewed as Group 1. Cavalier also believes that the parties should develop generalized language about adjusting the density cell assignments to be applied in future to specific central offices. Cavalier believes that some such adjustments should be possible, just as they are with LATA boundaries and local calling areas. Cavalier requests that the Commission adopt the language contained in Section 6 of Exhibit "C."

Issue No. 7: Digital Subscriber Line Services

Description of Issue:

Should Cavalier be able to obtain DSL provisioning in the absence of Commission established rates?

Cavalier Position:

The rates filed by Verizon with the Commission in December 2000 have not been approved. Provisioning should be completed by these rates for an interim period, with all

¹⁷ See Case No. PUC-2002-010213.

billing subject to true up. Either party at any time may petition the Commission to address the rates, and if the Commission declines, may petition the FCC.

Verizon Position:

The DDL rates were approved by the New York Public Utility Commission. No other true up is necessary.

Proposed Resolution:

In oral discussions, Cavalier noted that it had sent Verizon a proposed revision to Verizon's DDL amendment. Verizon asserted that it had no record of that proposal. Cavalier therefore re-sent the proposal to Verizon by e-mail on July 24, 2002 and has not heard back from Verizon about the matter. Cavalier therefore suggests that its proposed amended language, set forth in Exhibit "C" is appropriate. Cavalier recognizes that in the normal course Verizon will file terms and conditions applicable to conditioning loops, and is prepared to accept the outcome of any proceedings associated with such filings. In the meantime, however, the parties need an agreed rate to apply to conditioning. \$200 seems extremely reasonable to Cavalier, given that conditioning some loops will be very easy, balancing out those where more complex activity is involved. The \$200 figure is not intended to restrict Verizon's right to file whatever rates and rate structures it views to be appropriate, based on whatever data it may have, for consideration by the affected state regulators. Cavalier requests that the Commission adopt the language contained in Section 7 of Exhibit "C."

Issue No. 8: 911 Issues

Description of Issue:

Should Cavalier be compensated for E911 services that it performs and/or should Verizon be compensated for E911 services that it does not perform?

Cavalier Position:

In a multi-carrier environment, Cavalier performs a number of important functions associated with keeping 911 service running properly, including functions that underlie the charges in Verizon's current 911 tariff. Some recognition needs to be made of the fact that Cavalier performs these functions and Verizon does not. Cavalier would prefer a revised Verizon 911 tariff that charges for what Verizon does, but does not charge for what Verizon does not do. An alternative might be for Verizon to charge the counties for the entire cost of the activity, but then remit an appropriate portion of the money to Cavalier. In broad terms this is analogous to jointly provided access service, e.g., charges to EXCs for access when tandem functionality is provided by Verizon but end office and CCL is provided by an independent company whose switch subtends that tandem. The solution in those circumstances is to have each party get paid for what it does, and for the

customer (in the access case, the IXC; in the 911 case, the county) not to be charged twice for the same function.

Verizon Position:

Each party should be compensated per their own tariff, regardless of actual services performed.

Proposed Resolution:

This matter seems fairly simple. The solution in those circumstances is to have each party get paid for what it does, and for the customer (in the access case, the IXC; in the 911 case, the county) not to be charged twice for the same function. Cavalier requests that the Commission adopt the language contained in Section 8 of Exhibit "C."

Issue No. 9: Dark Fiber

Description of Issue:

Should a better dark fiber inquiry/ordering process be established?

Cavalier Position:

The current system for making dark fiber available to Cavalier is fraught with excessive red tape and delay. The inquiry, response, and field trial methods employed by Verizon cause unnecessary delay. Verizon needs to establish a system by which a reasonable inquiry can get a reasonable and meaningful response.

Verizon Response:

The current process is functional for Cavalier.

Proposed Resolution:

The current system for making dark fiber available to Cavalier is, in a word, broken. We need to establish a system by which a reasonable inquiry can get a reasonable and meaningful response. We would welcome a meaningful discussion with Verizon about alternative approaches to accomplish the same result. However, Verizon has objected to Cavalier's proposed language concerning dark fiber, without stating its reasons or proposing any alternative language. In the interim, Cavalier has signed dark fiber amendments and parallel provisioning agreements in Maryland and Virginia. Also as an interim measure, Verizon has provided Cavalier with a dark fiber amendment for Washington, D.C. and, pending a response on Cavalier's pricing question, Cavalier expects to execute that amendment and a parallel provisioning agreement for Washington, D.C. However, in an effort to advance negotiations on this point, Cavalier has proposed language, in Exhibit "C" that would formalize a more efficient process for

inquiring and reserving available dark fiber. Moreover, Cavalier's language fits within and is supported by the FCC's recent Order in the Consolidated Virginia Arbitration.¹⁸ Cavalier requests that the Commission adopt the language contained in Section 9 of Exhibit "C."

Issue No. 10: Collocation

Description of Issue:

Should collocation arrangements be improved and updated to be more efficient?

Cavalier Position:

Collocation arrangements are in need of improvement. The intervals for applications are too long and cumbersome, Cavalier should be allowed to step into the shoes of a third party's collocation arrangements when Cavalier acquires the equipment out of a bankruptcy proceeding, and Cavalier should be able to use tie-wraps in its collocated equipment. Verizon uses tie wraps in many settings (customer locations, outside plant casing, within its own central offices (as installed by the manufacture), proving that this does not represent a serious accident risk. Cavalier should be permitted to use tie wraps in its own collocated space. In addition, the escalation procedures need improvement.

Verizon Position:

The use of tie wraps presents a safety hazard and current intervals and collocation procedures are adequate.

Proposed Resolution:

Cavalier has proposed language previously provided to Verizon. The parties have also orally discussed problems with accession to collocation space vacated by competitive local exchange carriers who are in bankruptcy proceedings or have gone out of business, and who have sold their assets in that collocation space to Cavalier. Cavalier has proposed language, in Exhibit "C" to address these collocation matters. The language proposed by Cavalier to address this provision is not a new collocation arrangement, but, instead, a modification to an existing one. Handling a proposed modification should be simpler and smoother than setting up an entire new collocation. The tie-wrap language is designed to address a current dispute which adds significantly to Cavalier's operational hassles. Cavalier requests that the Commission adopt the language contained in Section 10 of Exhibit "C."

¹⁸ See Virginia Consolidated Arbitration Order at ¶ 445-483.

Issue No. 11: Customer Contacts

Description of Issue:

Should there be a more defined process of ensuring customer confidentiality is protected?

Cavalier Position:

The current agreement covers this topic in broad terms. What we need is better training in, and enforcement of, the present provisions. This proposed addition takes care of that. In addition, this language would more closely track the responsibilities set forth by the FCC's recent CPNI order.¹⁹

Verizon Position: No additional language is necessary.

Proposed Resolution:

In oral discussions, Cavalier has noted that the general language in the current Virginia and Pennsylvania (MCIMetro) agreements is favorable, but is not strong enough to deter certain problems with contacts by Verizon retail personnel or Verizon's affiliates' personnel. To ensure that Cavalier's position is clear to Verizon, and to ensure that Cavalier does not misstate Verizon's position, Cavalier therefore proposes language from Attachment VIII, § 1.1.1.2 of the MCIMetro agreement. Basically what we need is better training in and enforcement of the present provisions. This proposed addition takes care of that. Cavalier requests that the Commission adopt the language contained in Section 11 of Exhibit "C."

Issue No. 12: Erroneous Billing of Prior Verizon Customers.

Description of Issue:

Should Verizon pay a penalty when it continues to bill Cavalier's customer after leaving Verizon?

Cavalier Position:

The problem here is when a customer has left Verizon for Cavalier, but Verizon continues to send (erroneous) bills to the customer, as though he were still served by Verizon. Verizon could through direct contact with this customer, take the lead role to resolve the problem, but does not. These kind of mistakes cause severe disruptions in Cavalier's relationships with new customers as well as cause unnecessary costs for Cavalier to fix the double billing. It is necessary that compensation and liquidated

¹⁹ See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third FNPRM, FCC No. 02-214, Dkt Nos. 96-115, 96-149, 00-257 (07/16/2002).

damages provisions exist to compensate Cavalier for the harm to Cavalier and its business reputation and to provide a reasonable incentive to Verizon to avoid the problem in the future.

Verizon Position:

Verizon has set up an independent team to address these concerns.

Proposed Resolution of Issue:

Cavalier requests that the Commission adopt the language contained in Section 13 of Exhibit "C."

Issue No. 13: Joint Implementation Team

Description of Issue:

Should there be special procedures that apply in mass migrations or large scale ordering projects?

Cavalier Position:

Cavalier has experienced many difficulties in managing projects involving mass migrations from another CLEC. The parties ought to set up a regular structure for identifying and resolving disputes and other issues that arise over the course of their relationship. The following provisions are designed to do that.

Verizon Position: The current escalation procedures are satisfactory.

Proposed Resolution of Issue:

The parties ought to set up a regular structure for identifying and resolving disputes and other issues that arise over the course of their relationship. Cavalier's proposed language in Exhibit "C" on this point is designed to do that. Cavalier requests that the Commission adopt the language contained in Section 13 of Exhibit "C."

Issue No. 14: Treatment of Integrated Digital Loop Carrier Situations

Description of Issue:

Should there be revised procedures to allow for a test trial to reduce the volume of Cavalier orders rejected for "no facilities" reasons tied to IDLC?

Cavalier Position:

No facilities issues for 2-wire loop installation continually plague Cavalier. Verizon testified in its Virginia 271 proceedings that Cavalier should only experience a "no facility" condition in 1.5% of all orders. When a no facilities condition occurs due to IDLC, Verizon testified that it will find available copper or convert the line to UDLC. Verizon that only 1.5% of IDLC's cannot be converted. Cavalier has hard data accumulated over the past three years that indicate that the 3-5% of it orders are rejected. If Verizon testified that the condition is only prevalent 1.5% of the time, it should back up this stance with a remedy payment, in the event of a greater occurrence. The parties should engage in a trial to find a solution to the problem.

Verizon Position:

The current metric/PAP process is sufficient.

Proposed Resolution of Issue:

If Verizon cancels Cavalier's orders for no facilities due to IDLC more frequently than 1% of the time then Verizon should compensate Cavalier for the loss. Cavalier requests that the Commission adopt the language contained in Section 15 of Exhibit "C."

Issue No. 15: Hot Cuts**Description of Issue:**

Should the parties establish a joint trial to better streamline the process of hot cuts?

Cavalier Position:

The parties should engage a trial to develop a new software controlled hot cut process that would eliminate the "cutover coordination" procedure. The current rate should not exceed \$35 until such a new process is introduced.

Verizon Position:

The development of a new process is currently underway in New York. The New Jersey Board of Public Utilities set the cap on the rate. There does not need to be any further trials.

Proposed Resolution:

It is long overdue for the development of a modern process that reflects a reasonable rate for this function. The industry is working towards improved efficiencies in a New York process, and the benefits of these improvements should be incorporated into current

network arrangements with Cavalier. Cavalier requests that the Commission adopt the language contained in Section 15 of Exhibit "C."

Issue No. 16: Embargoes on Orders & Services

Description of Issue:

Should the parties be allowed to embargo the provision of services, absent commission authorization, to each other as a mechanism to resolve disputes?

Cavalier Position:

In the absence of any specific Commission ruling, the parties should first bring their grievances to the Commission for resolution before shutting off service. Until determined by the Commission the classification of "bona-fide" rests with the service provider.

Verizon Position:

Verizon determines if the dispute is bona-fide or not, whether or not the issue is a payable or receivable.

Proposed Resolution of Issue:

Given the parties' history of disputes, we should make clear that — while situations may arise where terminating service or refusing to provide additional service may indeed be appropriate — neither party should rely on "self help" for that type of relief. Cavalier requests that the Commission adopt the language contained in Section 17 of Exhibit "C."

Issue No. 17: Unified Make-Ready Process for Pole Attachments

Description of Issue:

Should a revised and more efficient unified make-ready process for pole attachments be implemented.

Cavalier Position:

In Cavalier's experience with Verizon, there are inherent inefficiencies in Verizon's make ready processes, such as the requirement that each party attached to the poles perform its own separate engineering and construction work to make the poles ready for new attachments, and the delays in obtaining reasonable responses in a timely fashion. Verizon's processes cause unnecessary delays to Cavalier's ability to build its network.

Verizon Position:

Verizon does not believe a unified make-ready process for pole attachments is needed and has not provided any specific reason justifying this position.

Proposed Resolution:

Cavalier requests that the Commission adopt the language contained in Section 18 of Exhibit "C."

Issue No. 18: Local and Toll Billing Data

Description of Issue:

Should Verizon's processes and responsibilities for identifying local traffic and access traffic be improved?

Cavalier Position:

Cavalier has identified a problem in Verizon's processes for identifying traffic as either toll or local. This affects many of Cavalier's access bills to and from other carriers and is a problem that should be addressed in clearer responsibilities and procedures in the information that Verizon provides to Cavalier so that Cavalier is not overcharging or undercharging other carriers and vice versa.

Verizon position:

Unknown

Proposed Resolution:

Cavalier requests that the Commission adopt the language contained in Section 19 of Exhibit "C."

Issue No. 19: Network Rearrangement

Description of Issue:

Should Verizon be allowed to charge Cavalier for Verizon's network rearrangements?

Cavalier Position:

On occasion, Verizon will notify Cavalier that Verizon is undertaking network rearrangements, such as the moving of a tandem switch from one location to another location after Cavalier has interconnection arrangements with Verizon at the former location. Verizon then requests that Cavalier compensate Verizon in part for Verizon's

network rearrangements that have little or nothing to do with Cavalier's use of the network. Cavalier believes that is unfair and discriminatory and that Verizon should bear its own costs for such rearrangements.

Verizon Position:

Verizon believes that CLECs should share these costs.

Proposed Resolution:

Cavalier requests that the Commission adopt the language contained in Section 20 of Exhibit "C."

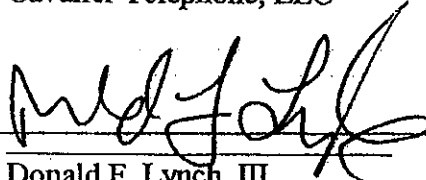
WHEREFORE, Cavalier respectfully requests that the Commission grant the following relief:

-
- A. That the Commission arbitrate the unresolved issues between Cavalier and Verizon within nine months of March 11, 2002, the date on which the parties agree that interconnection negotiations began;
 - B. That the Commission issue an order directing the parties to submit within thirty days of the date of the order an interconnection agreement reflecting: (1) the language proposed by Cavalier in Exhibit C, as incorporated into either the conforming agreement filed by the parties in the Consolidated Virginia Arbitration proceeding at the FCC or the existing agreement operative with the parties in this state; and (2) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Cavalier herein and in Exhibit C;
 - C. That the Commission retain jurisdiction of this arbitration until the parties have submitted an interconnection agreement for approval by the Commission in accordance with Section 252(e) of the Act;
 - D. That the Commission further retain jurisdiction of this arbitration and the parties hereto until Verizon has complied with all implementation time frames specified in the arbitrated interconnection agreement and has fully implemented the terms of the agreement; and
-

E. That the Commission take such other and further action as it deems appropriate.

Respectfully submitted,

Cavalier Telephone, LLC

A handwritten signature in black ink, appearing to read 'D. F. Lynch, III', is written over a horizontal line.

Donald F. Lynch, III
Assistant General Counsel
Cavalier Telephone, LLC
2134 West Laburnum Ave.
Richmond, VA 23227

Tel: 804.422.4516

Fax: 804.422.4599

dlynch@cavtel.com

Dated: August 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2002, true and correct copies of the foregoing Petition of Cavalier Telephone, LLC For Arbitration with Verizon Virginia, Inc. pursuant to 47 U.S.C. § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, was served by First Class Mail, postage pre-paid, upon:

Hernando A. Londono

Gary Librizzi

~~Jim Pachulski~~

2107 Wilson Blvd., 11th Floor

Arlington, VA 22201

and delivered via hand delivery to:

~~Lydia R. Pulley~~

Vice President and General Counsel

Verizon Virginia, Inc.

600 East Main Street, 11th Floor

Suite 1100

Richmond, Virginia 23219

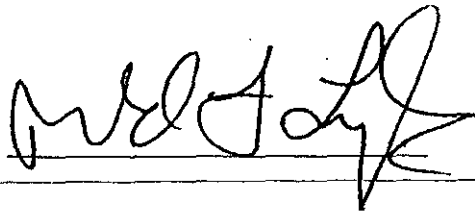
Office of General Counsel

Virginia State Corporation Commission

Tyler Building

1300 East Main Street

Richmond, Virginia 23219

A handwritten signature in black ink, appearing to read "Lydia R. Pulley", is written over a horizontal line.